STATE OF MICHIGAN

COURT OF APPEALS

WAYNE COUNTY COMMUNITY COLLEGE, Respondent-Appellant,	UNPUBLISHED December 16, 2008
v WAYNE COUNTY COMMUNITY COLLEGE PROFESSIONAL & ADMINISTRATIVE ASSOCIATION, MFT LOCAL 4467, Charging Party-Appellee.	No. 279589 MERC LC No. 04-000311

WAYNE COUNTY COMMUNITY COLLEGE Respondent-Defendant,	
v WAYNE COUNTY COMMUNITY COLLEGE PROFESSIONAL & ADMINISTRATIVE ASSOCIATION, MFT LOCAL 4467 Charging Party-Plaintiff.	No. 279679 MERC LC No. 04-000311

Before: Saad, C.J., and Fitzgerald and Beckering, JJ.

PER CURIAM.

In these consolidated cases, respondent appeals from the Michigan Employment Relations Commission's (MERC) determination that respondent committed an unfair labor practice (Docket No. 279589), and charging party seeks enforcement of MERC's order pursuant to MCR 7.206(E) (Docket No. 279679). We affirm MERC's decision, and we grant the charging party's petition to enforce MERC's order.

The dispute between the parties arose when respondent withdrew the Blue Cross Blue Shield (BCBS) traditional insurance plan from the medical insurance options available to college employees. The charging party filed an unfair labor practice charge, alleging in essence that respondent had repudiated the parties' collective bargaining agreement (CBA). MERC found that the unilateral withdrawal of the traditional insurance plan was an unfair labor practice. On

appeal, respondent maintains that the CBA authorized respondent to withdraw the plan so long as respondent offered another comparable plan. Respondent also argues that because medical insurance is covered by the CBA, the parties should have resolved their dispute pursuant to the CBA's grievance procedure.

This Court reviews MERC's factual findings "with the deference due administrative expertise." *St Clair Intermediate School Dist v Intermediate Ed Ass'n*, 458 Mich 540, 557; 581 NW2d 707 (1998). MERC's factual findings are conclusive if this Court determines that the findings are "supported by competent, material, and substantial evidence on the record." MCL 423.216(e). MERC's legal conclusions "may not be disturbed unless they violate a constitutional or statutory provision or they are based on a substantial and material error of law." *Oak Park Pub Safety Officers Ass'n v Oak Park*, 277 Mich App 317, 324; 745 NW2d 527 (2007).

We find that the record supports MERC's factual findings and that MERC made no material error in its legal conclusions. A breach of a collective bargaining agreement can constitute an unfair labor practice if there was no bona fide dispute over the interpretation of the agreement, and the breach of the agreement was substantial and had a significant impact on the bargaining unit. *Harrison Twp v American Federation of State, Co, & Muni Employees*, 21 MPER 24 (2008). Here, MERC correctly concluded that there was no bona fide dispute over the meaning of the CBA's medical insurance provision.

The provision of the CBA at issue reads as follows: "The Employer agrees to pay the necessary premiums to provide at the employee's option either the [HAP] or the [BCBS traditional plan], or [BCBS PPO] or any other comparable plan . . . ." The word "either" immediately precedes the phrase that identifies two plans, i.e., the HAP and the BCBS traditional. "Either" means "one or the other of two." *Random House Webster's College Dictionary* (1991). Accordingly, the clause "provide at the employee's option either the [HAP] or the [BCBS traditional plan]" means that respondent must provide the two specifically named plans and must give employees the option of selecting one of those plans. The second phrase, which begins after the comma, references "the [BCBS PPO] or any other comparable plan." Given that the second phrase is introduced by a comma, and that the first phrase is introduced by the word "either," MERC was correct in determining that the provision required respondent to provide three options: (1) the HAP, (2) the BCBS traditional, and (3) the BCBS PPO or any other comparable plan. Although the provision authorized respondent to substitute a comparable plan for the PPO, the provision did not authorize respondent to withdraw either of the other two plans. If respondent intended to reserve the prerogative of withdrawing one of the plans, respondent could readily have done so during the negotiation of the CBA by bargaining to alter the language of the medical insurance provision. Cf. *St Clair*, *supra* at 573 (a party is "entitled to insist on the terms that had been specifically bargained for and memorialized in the collective bargaining agreement").

Similarly, MERC correctly found that respondent's withdrawal of the traditional insurance plan was a substantial breach of the CBA, and that the breach had a significant impact on the bargaining unit. The record demonstrates that respondent withdrew one of the medical insurance options guaranteed by the CBA, and that the withdrawal impacted at least one-third of the employees' bargaining unit. The breach was thus both substantial and significant. In sum,

there was no error in MERC's determination that respondent had repudiated the CBA, and that the repudiation was an unfair labor practice.

Having determined that the MERC order should be affirmed, we hold that the charging party is entitled to an order enforcing MERC's decision. MCL 423.216(d). In arguing against an enforcement order, respondent filed in this Court an affidavit from its benefits administrator indicating that respondent is making "good faith efforts" to comply with MERC's order. A party seeking to present additional evidence must show "to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the commission, its commissioner or agent." MCL 423.216(d). Here, the affidavit is not part of the record, and respondent neither requested nor received permission from this Court to submit additional evidence. Because respondent has not demonstrated reasonable grounds for submitting additional evidence in the appeal, we decline to consider the affidavit. We note however, that, were we to consider it, the affidavit does not establish that respondent has fully complied with MERC's order.

With regard to the charging party's request for an order of enforcement of the MERC order, the statute, MCL 423.216(d), provides:

> The commission or any prevailing party may petition the court of appeals for the enforcement of the order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings. Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction of the proceeding and shall summarily grant such temporary or permanent relief or restraining order as it deems just and proper, enforcing, modifying, enforcing as so modified, or setting aside in whole or in part the order of the commission. . . .

Moreover, once a prevailing party petitions this Court for enforcement, the statute requires this Court to

> summarily grant such temporary or permanent relief or restraining order as it deems just and proper, enforcing, modifying, enforcing as so modified, or setting aside in whole or in part the order of the commission. . . . The findings of the commission with respect to questions of fact if supported by competent, material, and substantial evidence on the record considered as a whole shall be conclusive. [*Id*.]

The decision of MERC is affirmed for the reasons set forth in this opinion and, pursuant to MCL 423.216(d), we grant the charging party's petition for enforcement of MERC's order in the original action filed in Docket No. 279679.

/s/ Henry William Saad
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering